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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

KEVIN FERNANDEZ, ) 3:12-cv-00401-LRH (WGC)  
Plaintiff, )  
vs. )  
DR. CENTRIC, et. al. )  
Defendants. )

Before the court is Plaintiff's Motion for a More Definite Statement. (Doc. # 68.)<sup>1</sup> Defendants opposed (Doc. # 70) and Plaintiff replied (Doc. # 80).

**I. BACKGROUND**

At all relevant times, Plaintiff Kevin Fernandez was an inmate in custody of the Nevada Department of Corrections (NDOC). (Pl.'s Compl. (Doc. # 4) at 1.)<sup>2</sup> The allegations giving rise to this action took place while Plaintiff was housed at Northern Nevada Correctional Center (NNCC). (*Id.*) Plaintiff, a pro se litigant, brings this action pursuant to 42 U.S.C. § 1983. (*Id.*) Defendants are Dr. Ronald Centric, Greg Cox, Susan Fritz, Dr. Karen Gedney<sup>3</sup>, David Konrad, Jack Palmer, Dr. John Scott, Elizabeth Walsh, and Robert Schober.<sup>4</sup> Plaintiff has also named

<sup>1</sup> Refers to the court's docket number.

<sup>2</sup>A motion for leave to amend the Complaint is currently pending and will be addressed in a separate order. (See Doc. # 72.)

<sup>3</sup>Erroneously identified by Plaintiff in the Complaint as Dr. Gentney. (See Errata at Doc. # 93.)

<sup>4</sup>Erroneously identified by Plaintiff in the Complaint as Sergeant Chubert. (See Errata at Doc. # 92.)

1 various doe defendants that have not yet been identified.<sup>5</sup>

2 Plaintiff asserts claims against Defendants under the First, Eighth, and Fourteenth  
 3 Amendments in connection with his placement in the Mental Health Unit (MHU) at NNCC,  
 4 being labeled mentally ill, being subjected to treatment for mental illness through therapy, and  
 5 involuntary administration of anti-psychotic prescription drugs. (Doc. # 4.)

6 Plaintiff now moves under Federal Rule of Civil Procedure 12(e) for a more definite  
 7 statement; arguing that the answer filed by Defendants merely contains "boilerplate" language,  
 8 and that Defendants denied Plaintiff's allegations when they are true. (Doc. # 68.) Defendants  
 9 argue that Plaintiff's motion should be denied as improper because no responsive pleading is  
 10 permitted with respect to an answer. (Doc. # 70.)

## 11 II. DISCUSSION

12 Federal Rule of Civil Procedure 12(e) provides, in pertinent part:

13 A party may move for a more definite statement of a pleading to which a  
 14 responsive pleading is allowed but which is so vague or ambiguous that the party  
 15 cannot reasonably prepare a response. The motion must be made before filing a  
 16 responsive pleading and must point out the defects complained of and the details  
 17 desired.  
 Fed. R. Civ. P. 12(e).

18 A motion for more definite statement is disfavored. See *U.S. E.E.O.C. v. Alia Corp.*, 842  
 19 F.Supp.2d 1243 1250 E.D. Cal. 2012); *C.B. v. Sonora School Dist.*, 691 F.Supp.2d 1170, 1191  
 20 E.D. Cal. 2010). It does not appear that the Ninth Circuit has determined whether a Rule 12(e)  
 21 motion may be used to attack an answer. The Northern District of Texas found that a plaintiff  
 22 could not file a Rule 12(e) motion with respect to an answer because "Rule 12(e) only applies  
 23 to 'a pleading to which a responsive pleading is permitted[]'" and "Rule 7(a) does not permit  
 24 a responsive pleading to an affirmative defense or an answer unless the court orders one."  
*Travelers Indem. Co. of Conn. v. Presbyterian Healthcare Resources*, 313 F.Supp.2d 648 (N.D.  
 25 Tex. 2004). The Southern District of Florida, on the other hand, did permit such a motion. See  
*Exhibit Icons, LLC v. XP Cos., LLC*, 609 F.Supp.2d 1282, 1300 (S.D. Fla. 2009) (allowing

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27 <sup>5</sup>A motion for leave to amend to substitute in the names of various doe defendants is currently pending  
 28 and will be addressed in a separate order. (See Docs. # 86, # 91.)

1 defendants an opportunity to amend “vague” or “ambiguous” affirmative defenses).

2 The court agrees with the Northern District of Texas that Plaintiff may not direct a Rule  
 3 12(e) motion toward Defendants’ answer because Rule 12(e) only applies to “a pleading to  
 4 which a responsive pleading is permitted,” and a reply to an answer may only be filed by order  
 5 of the court and this court has not ordered such a reply be filed.

6 Even if a motion for more definite statement directed toward an answer were permitted  
 7 in this circuit, the answer that is the subject of the motion must be unintelligible and not just  
 8 lacking in some detail. *See U.S. E.E.O.C. v. Alia Corp.*, 842 F.Supp.2d at 1250 (citation omitted)  
 9 (“The purpose of Rule 12(e) is to provide relief from a pleading that is unintelligible, not one  
 10 that is merely lacking detail.”); *Gregory Village Partners v. Chevron, U.S.A.*, 805 F.Supp.2d  
 11 888 (N.D. Cal. 2011) (“A motion for more definite statement attacks intelligibility, not simply  
 12 lack of detail.”). “Where the [pleading] is specific enough to [apprise] the responding party of  
 13 the substance of the claim [or defense] being asserted or where the detail sought is otherwise  
 14 obtainable through discovery, a motion for a more definite statement should be denied.” *See*  
 15 *U.S. E.E.O.C. v. Alia Corp.*, 842 F.Supp.2d at 1250 (citation omitted).

16 The court has reviewed Defendants’ answers (Docs. # 51, # 57) and does not find them  
 17 to be unintelligible. Instead, the court finds that they comport with the requirements set forth  
 18 in Federal Rule of Civil Procedure 8 which provides that an answer must “state in short and  
 19 plain terms its defense to each claim asserted against it” and “admit or deny the allegations  
 20 asserted against it by an opposing party.” Fed. R. Civ. P. 8(b)(1). Each “denial must fairly  
 21 respond to the substance of the allegation.” Fed. R. Civ. P. 8(b)(2). A party is within its rights  
 22 to admit that part of an allegation that is true and deny the rest. Fed. R. Civ. P. 8(b)(4). In  
 23 addition, “[a] party that lacks knowledge or information sufficient to form a belief about the  
 24 truth of an allegation must so state, and the statement has the effect of a denial.” Fed. R. Civ.  
 25 P. 8(b)(5). Finally, a party must include all affirmative defenses. Fed. R. Civ. P. 8(c)(1).

26 Therefore, to the extent Plaintiff attacks Defendants’ answers because they contain the  
 27 “boilerplate” language that there is insufficient information to admit or deny, his motion should  
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1 fail as Defendants are specifically entitled to utilize this response. Moreover, if Plaintiff believes  
2 that Defendants should have admitted certain aspects of his allegations, it is his burden to  
3 prove a particular allegation true at trial. If Plaintiff meets his burden, he would certainly be  
4 permitted to introduce Defendants' answer at the time of trial to show any apparent  
5 contradictory positions taken by Defendants, but the court cannot compel Defendants to  
6 change their response to his allegations.

7  
8 **III. CONCLUSION**  
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10 For the foregoing reasons, Plaintiff's motion (Doc. # 68) is **DENIED**.  
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12 DATED: January 24, 2013  
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15 WILLIAM G. COBB  
16 UNITED STATES MAGISTRATE JUDGE  
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